Supreme Court, U. S.
FILED
NOV 24 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1976.

No. 76-474.

NEWARK SCHOOL DISTRICT,

Appellant,

v.

BRENDA EVANS, et al.,

Appellees.

On Appeal From the United States District Court for the District of Delaware.

APPELLANT'S MEMORANDUM IN REPLY TO MOTION TO AFFIRM.

JOHN P. SINCLAIR,
POTTER ANDERSON & CORROON,
350 Delaware Trust Building,
P. O. Box 951,
Wilmington, Delaware. 19899
Attorneys for Newark School District, Appellant.

International Printing Co., 711 So. 50th St., Phila., Pa. 19143 — Tel. (215) 727-8711

1. The strictures on reply memoranda do not permit analysis and exposure of appellees' distortion of the history of public education in New Castle County, Delaware. Suffice it to say that a person familiar with that history would be unable to recognize the school districts the appellees purport to describe. To say, as appellees do, that there was in New Castle County an arrangement for "complete inter-district segregation" which went on for twenty years after *Brown* is to engage in pure fantasy. In fact, the record is clear that the "victims" in this case, the school children of Wilmington, were never discriminated against on an inter-district basis, either before or after *Brown*. The record is also clear that inter-district arrangements which in pre-*Brown* days discriminated against some students outside Wilmington had ceased more than a decade before the filing of the supplementary complaint in this case. Appellees prefer to ignore the record and to rewrite history in the Orwellian manner, expunging in the process the recognition by the United States Court of Appeals for the Third Circuit that schools in the Wilmington metropolitan area were integrated before 1960, *Evans v. Ennis*, 281 F. 2d 385, 393 (3rd Cir. 1960).

2. Although appellees purport to respond to the appeal of Newark School District in No. 474, they fail to suggest any valid basis for including in the remedy a district which was not involved in any constitutional violation. Newark School District has been a unitary school district since shortly after *Brown*. It was never involved in an inter-district arrangement with Wilmington School District which discriminated against any students in Wilmington. Like Wilmington School District, the boundaries of Newark School District were unchanged by the Educational Advancement Act and nothing in that statute effected any inter-district segregation between Newark and Wilmington. The District Court recognized in its March 27, 1975 opinion that Newark, like Wilmington, operates

a public housing program, 393 F. Supp. at 428. Newark School District is not contiguous to Wilmington; in fact, except for an elongated northern route through Alexis I. duPont School District, travel by any of several routes between Newark School District and Wilmington School District involves going through two other school districts.

In short, the District Court included Newark School District in the remedy, not because Newark was involved in any constitutional violation but because the District Court thought the inclusion of Newark School District would add to the stability of the desegregation area. Appellees seek to defend the propriety of this action but it is plainly contrary to the teaching of *Milliken v. Bradley*, 418 U. S. 717 (1974).

3. Delaware is a small state. It has only three counties and in 1970 the population of the state was only 548,000. Although the numbers may seem small in comparison with some school cases, the restructuring of the educational system of Delaware has implications which extend far beyond Delaware's boundaries. More than 60 percent of the students in Delaware will be affected by the decree and more than $20,000,000 in new taxes must be raised annually to implement the Court's requirement that every school district have approximately the same black-white student ratio as every other school district.

Respectfully submitted,

JOHN P. SINCLAIR,
POTTER ANDERSON & CORROON,
350 Delaware Trust Building,
P. O. Box 951,
Wilmington, Delaware. 19899
Attorneys for Newark School District, Appellant.

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